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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Burton Colson,

10 Plaintiff,

11 vs.

12 Javad Maghami a/k/a Javad
13 Ghaemmaghani Marie Debernardi
14 Maghami d/b/a Scottsdale Lamborghini
and/or Scottsdale Motorsports;
15 Lamborghini of Scottsdale LLC, an
Arizona limited liability company; Motor
16 Sports Of Scottsdale, Inc., Motorsports of
Scottsdale No. 2, LLC, and Automobili
17 Lamborghini America, LLC, a Delaware
Corporation,

18 Defendants.
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20 Automobili Lamborghini Holding S.p.A.,
Automobili Lamborghini S.p.A., and
Automobili Lamborghini America, LLC,)

21 Crossclaimants,
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23 v.

24 Motorsports of Scottsdale, Inc., d/b/a
Lamborghini America Scottsdale,
Lamborghini of Scottsdale, LLC, Motor
25 Sports of Scottsdale No. 2, LLC, Javad
Maghami a/k/a Javad Ghaemmaghani,
26 and Marie Maghami a/k/a Marie
Ghammaghami,
27

28 Crossdefendants.

No. CV08-2150-PHX-MHM

ORDER

1 Currently pending before the Court is a Motion for Leave to File Verified Crossclaim
2 filed by Motor Sports of Scottsdale, Inc. (Dkt.#108); a First Motion to Amend/Correct
3 Complaint filed by Barton Colson (Dkt.#110); and a Motion for Order to Show Cause Why
4 Crossdefendants Should Not Be Held in Contempt filed by Automobili Lamborghini
5 America, LLC, Automobili Lamborghini Holdings S.p.A., and Automobili Lamborghini
6 S.p.A.(Dkt.#93). Having considered these motions and their accompanying papers, the Court
7 issues the following Order.

8 **I. Motion for Leave to File Verified Crossclaim**

9 **A. Relevant Procedural history**

10 This case began as a relatively simple claim by Barton Colson (“Colson”) for the
11 recovery of a deposit of nearly \$1.4 million he paid to secure the delivery of a Lamborghini
12 Reventon vehicle. When it became clear that no delivery would ever occur, Colson sued the
13 dealership (Motorsports of Scottsdale or Scottsdale Motorsports), the dealer and his wife in
14 their individual capacities (Javad and Marie Maghami), and the manufacturer (Automobili
15 Lamborghini America, LLC) for eleven counts sounding in tort and contract relating to
16 defendants’ failure to deliver the car, misrepresentations, fraud, and failure to supervise its
17 employees and dealers.

18 On January 22, 2009, the Lamborghini defendants (Automobili Lamborghini S.p.A.,
19 Automobili Lamborghini Holding, S.p.A. and Automobili Lamborghini America, LLC) filed
20 a verified cross-claim.¹ (Dkt.#53) This cross claim alleged that despite being terminated as
21 a Lamborghini dealer and service provider, Motorsports continued to hold itself out as an
22 authorized Lamborghini dealer and continued to operate a parts and service department as
23 an authorized service provider for Lamborghini automobiles. The cross claim alleged unfair
24 competition and trademark infringement as well as breach of post-termination obligations
25 under the dealer agreement against Motorsports. It further alleged that Motorsports
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27 ¹ The Lamborghini defendants never filed a motion seeking leave to file their cross-
28 claim; however, as explained below, cross claims are always permissive under Rule 13(g).

1 wrongfully retained a Lamborghini automobile that was worth approximately \$240,000.²
2 Finally, the cross claim sought indemnification from Motorsports for the losses it might
3 sustain in connection with Motorsports' conversion of the purchase price of a Lamborghini
4 from Colson (Count VII). (Dkt.#53 at ¶¶ 99-104 and ¶ X at page 27)

5 In response, on June 12, 2009, Motorsports of Scottsdale filed a Motion for Leave to
6 File Verified Crossclaim against the Lamborghini Defendants/Crossclaimants. (Dkt.#108)

7 Motorsports alleges that the Lamborghini entities unreasonably withheld consent to sell
8 Motorsports to VNHS Properties (an entity that is not a party to this action) and violated the
9 Dealership Agreement by failing to consider VNHS's application in good faith. Based on
10 these charges, Motorsports alleges a breach of contract claim and a violation of A.R.S. § 28-
11 4457(A)(1) against the Lamborghini defendants. Motorsports further asserts that the
12 Lamborghini entities wrongfully drew against Motorsports' \$1.5 million line of credit with
13 Wells Fargo Bank, breaching the Dealer Agreement, causing Motorsports to lose its line of
14 credit with Wells Fargo, and causing significant damage to Motorsports. (Dkt.#108-2 at 3)

15 **B. Relevant Rules**

16 Motorsports seeks leave to file the verified cross claim summarized in the previous
17 paragraph. Under Rule 13(g), cross claims are always permissive. The full text of Rule
18 13(g) is as follows:

19 A pleading *may* state as a crossclaim any claim by one party
20 against a coparty *if* the claim arises out of the transaction or
21 occurrence that is the subject matter of the original action or of
22 a counterclaim, or if the claim relates to any property that is the
23 subject matter of the original action. The crossclaim may
include a claim that the coparty is or may be liable to the
crossclaimant for all or part of a claim asserted in the action
against the crossclaimant.

24 (Emphasis added.) Cross claims must arise out of the same transaction or occurrence as the
25 original action, or relate to the same property that is in dispute in the original action. See,
26 e.g., State of Cal. v. Kleppe, 604 F.2d 1187, 1192 n.6 (9th Cir. 1979); 6 Charles Alan Wright

27 ² This automobile is not the same Lamborghini Reventon that Plaintiff originally
28 sought to purchase.

1 & Arthur R. Miller, Federal Practice and Procedure § 1431 (noting that “only claims related
2 to the subject matter of the original action, or to property involved therein, are appropriate
3 as cross-claims against a coparty”).

4 Here, there are essentially three controversies at issue. Controversy A is Colson’s
5 attempt to regain the money he asserts that he paid for a Lamborghini Reventon. This is the
6 underlying lawsuit. Controversy B is the Lamborghini defendants’ arguments that
7 Motorsports of Scottsdale misappropriated the Lamborghini trademark after its dealership
8 agreement had been terminated. This is asserted as a cross-claim. Controversy C is
9 Motorsports’ argument that the Lamborghini defendants wrongfully withheld their approval
10 from Motorsports’ attempt to sell the dealership to a third party and that the Lamborghini
11 defendants wrongfully drew against the \$1.5 million Wells Fargo line of credit. This is also
12 asserted as a cross-claim. While Controversy C is clearly related to Controversy B, neither
13 Controversy B nor Controversy C arises out of the same transaction or occurrence as
14 Controversy A. The original plaintiff (Colson) simply wants his deposit to be returned and
15 has no interest in the outcome of the franchisee-franchisor dispute between Motorsports and
16 the Lamborghini defendants. Moreover, Controversy B and Controversy C threaten to dwarf
17 Controversy A. *See* 6 Charles Alan Wright & Arthur R. Miller, Federal Practice and
18 Procedure § 1431 (“[P]laintiff’s suit could become unduly complicated and prejudice might
19 result to him if defendant is allowed to raise a claim against a codefendant in which the
20 original plaintiff has no interest.”).

21 Because the two cross-claims do not arise out of the same transaction or occurrence
22 as the underlying lawsuit, they do not comport with Rule 13(g). As such, Motorsports’
23 Motion for Leave to File Verified Crossclaim (Dkt.#108) is denied. Moreover, given that
24 the Lamborghini Defendants’ Crossclaim (Dkt.#53) is not sufficiently related to Plaintiff’s
25 underlying case, it should also be dismissed. It is therefore dismissed except for the narrow
26 portion of the cross claim that seeks indemnity from Motorsports for having to defend against
27 the action by Colson (specifically, Dkt.#53 at ¶¶ 99-104 and ¶ X at page 27). It should be
28 obvious that both the Lamborghini Crossclaim (Dkt.#53) and the Motorsports Crossclaim

1 (Dkt.#108) are dismissed without prejudice to their subsequent assertion in an independent
2 lawsuit.

3 This ruling comports with Rule 21, which states that “[a]ny claim against a party may
4 be severed and proceeded with separately.” Courts have broad discretion regarding
5 severance under Rule 21. See Coleman v. Quaker Oats Co., 232 F.3d 1271, 1297 (9th
6 Cir.2000); Rice v. Sunrise Express, Inc., 209 F.3d 1008, 1015 (7th Cir. 2000) (noting district
7 courts’ “broad discretion” under Rule 21; “[a]s long as there is a discrete and separate claim,
8 the district court may exercise its discretion and sever it”); Old Colony Ventures I, Inc. v.
9 SMWNPF Holdings, Inc., 918 F. Supp. 343 (D. Kan. 1996) (in employing Rule 21, court
10 should consider convenience of parties, avoidance of prejudice, and judicial efficiency).

11 The Court is mindful that the parties may separately wish to appeal the results of
12 Colson’s Reventon dispute and the franchisor-franchisee dispute between Motorsports and
13 Lamborghini. Therefore, it is explicitly choosing to proceed under Rule 21 rather than Rule
14 42(b). “When a claim is severed under Rule 21, it ceases to be part of the same suit.” Mathis
15 v. Bess, 761 F.Supp. 1023, 1026 (S.D.N.Y. 1991). By contrast, if an issue is separated under
16 Rule 42(b), it will be tried separately but remain part of the same lawsuit. The most
17 important result of this distinction is that severed proceedings under Rule 21 become final
18 as each proceeding goes to judgment, and may be appealed individually. Separate trials
19 under Rule 42(b), by contrast, are typically *not* ready for appeal until all claims and issues
20 are decided. Acevedo-Garcia v. Monroig, 351 F.3d 547, 559-60 (1st Cir. 2003) (explaining
21 that under Rule 21 a judgment entered is final and appealable without regard to whether other
22 severed portions of original case have proceeded to judgment; in contrast, under Rule 42(b)
23 separate trials do not usually become appealable until all of the trials have been decided).
24 Rice v. Sunrise Express, Inc., 209 F.3d 1008, 1013 (7th Cir. 2000) (“Under Rule 21 . . .
25 severance creates two separate actions where previously there was but one”).
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1 **II. First Motion to Amend/Correct the Complaint**

2 Plaintiff Colson moves the Court for leave to file his First Amended Complaint to
3 include a failure to warn claim against Automobili Lamborghini America, LLP. (Dkt.#110)
4 This motion is unopposed.

5 Leave to file an amended complaint under Fed.R.Civ.P. 15(a) “shall be freely given
6 when justice so requires” and this policy ““is to be applied with extreme liberality.”” Owens
7 v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)(quoting Morongo Band
8 of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)). Inferences should be
9 drawn “in favor of granting the motion” to amend. Griggs v. Pace American Group, Inc.,
10 170 F.3d 877, 880 (9th Cir. 1999).

11 Colson explained that his delay in bringing the additional claim was due to the fact
12 that he discovered it only after discovery began. Because of this, it appears that the proposed
13 amendment is in good faith, that he has not delayed in seeking to amend, that granting leave
14 to amend will not prejudice Lamborghini America, and that the proposed amendment will
15 not be futile. Finding his motion unopposed, the authorities cited therein persuasive, and
16 given the liberal standards permitting amendment, the Court will grant this motion.

17 **III. Motion for Order to Show Cause Why Crossdefendants Should Not Be Held in**
18 **Contempt**

19 The Lamborghini defendants filed a Motion for Order to Show Cause Why
20 Crossdefendants Should Not Be Held in Contempt. This motion related to their cross-claim
21 against Motorsports regarding trademark infringement. (Dkt.#93) Given that this cross-
22 claim has been dismissed from this action as explained above, this motion is now moot.

23 **Accordingly,**

24 **IT IS HEREBY ORDERED** denying Motorsports’ Motion for Leave to File Verified
25 Crossclaim (Dkt.#108).

26 **IT IS FURTHER ORDERED** dismissing without prejudice the Lamborghini
27 Defendants’ Crossclaim (Dkt.#53) except for the narrow portion of the cross claim that seeks
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1 indemnity from Motorsports for having to defend against the action by Colson (specifically,
2 Dkt.#53 at ¶¶ 99-104 and ¶ X at page 27).

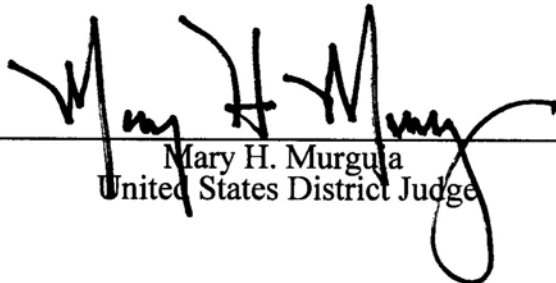
3 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to Amend
4 (Dkt.#110) is granted. Plaintiff's First Amended Complaint is deemed filed as of the date
5 of this Order.

6 **IT IS FURTHER ORDERED** denying as moot the motion for Order to Show Cause
7 Why Crossdefendants Should Not Be Held in Contempt. (Dkt.#93)

8 The parties are reminded that the deadlines contained in the Court's Case
9 Management Order dated April 16, 2009 (Dkt.#102) will continue to apply and will be
10 strictly enforced.

11 DATED this 29th day of July, 2009.

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Mary H. Murgula
United States District Judge